Monarch Construction Corp. and Hallmark Interiors, Inc. *and* Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO. Case 29–CA–15544

November 19, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On March 20, 1992, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

AMENDED CONCLUSIONS OF LAW

Add the following after paragraph 3(c).

''(d) Threatening to deny employees work assignments because of their union activities.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Monarch Construction Corp. and Hallmark Interiors, Inc., Long Island City, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(d) and reletter the subsequent paragraph.

''(d) Threatening its employees with denial of work assignments because of their union activities.''

2. Substitute the attached notice for that of the administrative law judge.

[1] We shall modify the judge's conclusions of law and recommended Order to reflect his finding that the Respondent violated Sec. 8(a)(1) of the Act by threatening to deny employees work assignments because of their union activities. We shall also issue a new notice to employees.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate our employees regarding their knowledge of Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO (the Union) or of the union campaign.

WE WILL NOT create an impression among our employees that their activities on behalf of the Union are under surveillance.

WE WILL NOT threaten our employees with the loss of benefits, or the loss of wage increases or bonuses, if they select the Union as their collective-bargaining representative.

WE WILL NOT threaten to deny employees work assignments because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

MONARCH CONSTRUCTION CORP. AND HALLMARK INTERIORS, INC.

Saundra Rattner, Esq., for the General Counsel.
Ira Drogin, Esq. and *Stephen L. Ferszt, Esq. (Todtman, Young, Tunick, Nachamie, Hendler, Spizz & Drogin)*, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on January 15 and 16, 1992, in Brooklyn, New York. The complaint herein, which issued on April 26, 1991, was based upon an unfair labor practice charge and an amended charge filed on February 26 and April 16, 1991, by Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO (the Union). The complaint alleges numerous 8(a)(1) allegations together with one 8(a)(3) allegation. It is alleged

that in about August 1990,[1] Monarch Construction Corp. and Hallmark Interiors, Inc. (Respondent or Respondents), interrogated its employees regarding their union activities and threatened them with unspecified reprisals if they became or remained members of the Union, or gave assistance or support to the Union. The complaint further alleges that on about December 11, Respondent threatened to deny work assignments to its employees, threatened its employees with layoff, and threatened to withhold a wage increase and an annual bonus due to the employees if they became or remained members of the Union or assisted the Union, advised its employees that it would be futile to select the Union as their collective-bargaining representative, and created an impression among the employees that their union activities were being kept under surveillance. The complaint also alleges that Respondent violated Section 8(a)(3) of the Act, on about December 28, by failing and refusing to provide its employee Devon Davidson with work assignments previously given to him and by laying him off on that day. On the entire record, including the briefs received from the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Monarch Construction Corp. (Respondent Monarch) and Hallmark Interiors, Inc. (Respondent Hallmark) are each New York State corporations with their principal office of business in Long Island City, New York, where they are engaged in construction, fabrication, and installation and constitute a single-integrated business enterprise and a single employer within the meaning of the Act. During the past year Respondent purchased and received at the Long Island City facility goods and materials valued in excess of $50,000 directly from points located outside the State of New York. Respondents admits, and I find, that each are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

Sometime in about March, Davidson was informed by Roy Shaw, a fellow employee that the Union was attempting to organize Respondent's employees. After that, Davidson assisted Shaw in reminding the employees of the union meetings. He signed a card for the Union on May 25 and the Union filed its petition with the Board on July 30. The petition was received by Respondent on August 3. Respondent's president, Charles Saliba, testified that this was his first knowledge of the Union's organizational campaign. A few days prior to receiving the petition, Saliba was visited by Union Vice President Johan Bel at Respondent's facility, although there is no testimony as to what occurred at this meeting. At the Board-conducted election on December 20, a majority of the votes were cast for the Union; Davidson was the Union's observer at this election.

There is some dispute regarding the work that Davidson was able to perform, and this has some relevance to his layoff. He began working for Respondent in about 1984; he was hired ''basically'' as a cabinet maker, ''but I do different things.'' Cabinet making was his principal job, and when there was cabinet work to perform, he did that until it was completed, and always with his foreman Cecil Clarke. If there was no cabinet work to be done, he did other work, such as carpentry, sheetrock and other work, and, principally, with Clarke. Although he is neither an ironworker nor a welder, he has performed this work, assisting other employees. He has never installed a hung ceiling for Respondent by himself, but he has worked with other employees in installing it. The last assignment he had was to spray paint more than one of Respondent's trucks; this took 2 or 3 weeks and was not concluded at the time that he was laid off on December 28. The last cabinet work he performed for Respondent was on December 11, when Saliba drove him to a job in Rockaway; this will be discussed further, below.

Saliba testified that about 15 percent of the work that Respondent receives has some cabinet work. Cabinet work is not only the cabinets that people generally think about, but it also encompasses benches (such as courtroom benches) and, possibly, doors. A cabinetmaker sits at a bench at a machine and builds the cabinet and, possibly, installs it as well. A carpenter does more varied work; he will install walls, ceilings, doors, and other rough work. Because he didn't always have enough cabinet work to keep Davidson busy all the time, Saliba sometimes assigned him to other work ''only as a means of keeping him busy.'' In this vein, he sometimes assigned him to assist in sheet rock work, as well as cleaning and other work. Saliba estimated that, on the average, Davidson spent 4 weeks of the year performing or assisting in carpentry type work, such as sheetrock. As to why he didn't previously layoff Davidson and other cabinetmakers when there was no cabinet work to be done, he testified that you can't maintain a business in that manner because you hope and assume that in a very short time you will have cabinet work, and you can't fire employees and hire new employees each time you finish one job and begin a new one.

The initial allegation herein is that during the month of August, Respondent, by Saliba, interrogated its employees regarding their union activities and threatened them with unspecified reprisals if they supported the Union. Davidson testified that, in about July or August, while he and Cecil Clarke were working on Saliba's boat (it was also referred to as the company boat), Saliba went inside the cabin of the boat to answer the telephone and Davidson heard him use the word ''union'' on the phone. Saliba came out of the cabin and asked Davidson and Clarke if they knew anything about the Union and they both answered ''no.'' Saliba then said that whoever was in the Union ''would get fucked.'' Cecil Clarke testified that, on the day in question, he and Davidson were working on the decking of the boat, in the rear of the boat; the phone was in the cabin of the boat, about eight feet from where they were working. On that day, the phone rang often, but he could not hear what Saliba said on the phone because he closed the door behind him. On one occasion, after speaking on the phone, Saliba came out of the cabin and asked Clarke if he knew anything about some union

[1] Unless indicated otherwise, all dates referred to herein relate to the year 1990.

guys; Davidson was right next to him at the time. Clarke said that he did not. Davidson said nothing, and Saliba never said that whoever was in the Union would ''get fucked.''

Saliba testified that Clarke and Davidson did work on the boat on the day in question (in July or August) and he never made the statement attributed to him by Davidson, that whoever was in the Union would get fucked; in fact, at the time, he was not aware that a union was attempting to organize his employees. He did ask them: ''Who were the strangers in the shop recently.'' He testified that while he was away (a few weeks before the incident on the boat) someone came to the facility; he learned ''months later'' that this person was from the Union. ''As a rule, nobody goes in my facility without me knowing.'' Clarke and Davidson both answered no to his question. He did not ask them about the Union.

The next allegation involves statements allegedly made by Saliba to Davidson on about December 11 at Respondent's facility. Davidson testified that on that day, while he was in the shop, Saliba approached him and said that there was no more cabinet work and he had to lay he and Cecil Clarke off. Saliba then said that his lawyer said that ''he can campaign now because it's campaign time . . . and he can say whatever he likes saying.'' In answer to questions on cross-examination, Davidson testified that Saliba also told him that he knew that whatever he told them went back to the Union, and, with the Union, if you are a cabinetmaker all you can do is cabinetmaking, and if you are a carpenter all you can do is carpentry. Upon being shown the affidavit he gave to the Board by counsel for Respondent, Davidson remembered that Saliba also told him that if he wanted to tell the Union about his layoff, he could do so. Saliba testified that he did not tell Davidson, on that day, that he would be laid off, nor did he make any statement about ''campaign time.'' On that morning he told Davidson that he would be going with him to the Rockaway job, where they needed some help.

The next allegation involves statements allegedly made by Saliba to Davidson, later that day, in the car on the way to the Rockaway job. Davidson testified that while they were driving to the Rockaway job, Saliba said that he was trying to put bread in everybody's mouth and ''now we bring the Union in.'' Saliba also said that he could do a lot of things for them, but the Union is there. Because of the Union he could not give them a 50 cents or $1 raise. Saliba further said that his lawyer said that because of the Union he cannot give a bonus to his employees, but he could give them an office party. Davidson told Saliba that he could say whatever he wanted, but he could not tell him who to vote for. Saliba then said that even when the Union was gone he would still be in business. Saliba also said that he was going to speak with everybody that was in the Union. Saliba testified that he never discussed wage increases, bonuses or the Union with Davidson, as Davidson testified to and that the conversation in the car was only about the Rockaway job. He never spoke to him about the Union, wage increases and bonuses, or that he wanted to put bread on everyone's table.

Ronald McLean, who was employed by Respondent until December 1991, testified that while he was driving with Saliba and another employee, Kanhai on August 13, returning from a job, Saliba said to Kanhai (who was sitting with him in the front seat): ''I hear you guys signed a Union card.'' Kanhai answered: ''I don't know what you are talking about, Charlie.'' Saliba then told them that if the Union came in he would have to close the shop. He also told them that if he were at the shop when the Union representative was there he would have hit him across the head with a two by four. General Counsel states that this testimony was solely to establish animus on the part of Respondent, rather than an 8(a)(1) violation.

Davidson was laid off on December 28 and, at least up to the time of the hearing herein, had not been recalled by Respondent. He testified that on that day, while he was spray painting one of Respondent's trucks, Saliba approached him in the afternoon and said that he was going to lay him off because he had no more cabinet work. Davidson asked how he could lay him off when the truck was not yet finished. He said that he was the boss and he runs things. Saliba also said that the Union said that if you are a cabinetmaker you have to stick to cabinetmaking and if you are a painter, you stick to painting. Saliba said that he would get someone to complete the painting of the truck and told Davidson to take a few days off and he would call him back. Davidson said that he would pack his tools and Saliba said: ''Trust me, I'll call you back.'' He testified that as he was walking through the facility on the way out, he overheard Saliba telling Maurice Clarke, who is employed by Respondent as a foreman, that he was getting rid of the union guys little by little. He was about 15 feet away from them at the time. Saliba and Maurice Clarke each testified that Saliba never made such a statement to Clarke.

Simply stated, Respondent's defense is that Davidson was laid off because since about mid-1990 Respondent has had little, if any, cabinet work to perform and it used Cecil Clarke to perform all the cabinet work that it had. Davidson testified that in about mid-1990, Respondent hired four cabinetmakers, including Pete Mancuso, for the Rockaway job, which was a big job. When he was laid off on December 28, of these four only Mancuso remained. Ronald McLean, who was employed by Respondent as a welder until December 1991, testified that during 1990 Respondent hired two new carpenters and three cabinetmakers. The carpenters were commonly called Wu and Lee, and they usually worked as a team. The cabinetmakers were Mancuso, Benito Gonzales and a third person whose name he could not remember. Mancuso and the two other cabinetmakers built cabinets that were installed in the Rockaway job. Of these five new employees, Mancuso, Wu and Lee were laid off after Davidson; Gonzales was laid off shortly before Davidson, and it is not entirely clear when the remaining employee stopped working for Respondent. He testified further that Mancuso returned to Respondent's employ in February 1991 and did mostly carpentry work and driving; he was laid off and called back two more times during 1991. Wu was also called back and laid off again during 1991, but he was uncertain when this occurred. As far as he knows, Mancuso, Wu, and Lee were the only carpenters or cabinetmakers who were reinstated during 1991. There appeared to be less work for Respondent in 1991 as compared to 1990.

Saliba testified that his business is very cyclical and that he has never seen business as bad as it was in 1990 and 1991. His gross business in 1990 was about $7 million and a little more than $6 million in 1991, but with little cabinet work. The slowdown began in early 1990 and never recovered. He kept his employees busy during 1990 because, in that year, he purchased a building which, as part of the

agreement of purchase, required that he improve it to the amount of about $450,000, which he did and concluded by about July .He testified that he would have laid off a large number of his employees at that time but for some charge that had been filed against him: ''We had to hang on to these people due to the fact that we had this claim, unfair labor board claim right about July. We had to carry these people on for the rest of the year.''[2] He retained these employees on the advice of counsel. A vast majority of his work comes from large companies, such as Con Edison, AT&T and IBM. He bids for this work on a regular basis and by early to mid-1990 ''There were not many bids to bid.'' In December the cabinetmakers in his employ were Cecil Clarke, Davidson, Gonzales, Learie Hernandez, and Rupnarine Rampsaran.

Saliba testified further that by the end of November there was no cabinet work to be performed and no cabinet work to bid on. From that time until the end of December, he kept his cabinetmakers busy with ''very menial work,'' like cleaning up and Davidson was assigned to spray paint one of Respondent's trucks. He did not lay them off earlier because he hoped that ''something else will break out in his trade.'' Gonzales was laid off on December 21; Ramsaran, Clarke and Davidson were all laid off at about the end of December.[3] Clarke was recalled to employment and again laid off on at least two occasions during 1991, and he was the only cabinetmaker employed during 1991; he was the only one recalled and no new cabinetmakers were hired during 1991. As to why Clarke, rather than Davidson was recalled in 1991, he testified: ''Very simple. He was a foreman and he was also the master craftsman.'' Additionally, Davidson did not have the proper license to drive Respondent's trucks; Clarke did. During 1991 he had very little cabinet work (about 6 week's worth), not nearly enough to keep one cabinetmaker busy. He kept Clarke busy doing ''miscellaneous work,'' cleaning up and answering the telephones, as well as doing the small amount of cabinet work that he had. An additional reason for keeping Clarke employed was that he would be around in case Respondent received some cabinet work to perform.

Saliba also testified about the carpenters that he employed during this period; Mancuso was a carpenter (not a cabinetmaker) who had been employed by Respondent years earlier. He answered one of Respondent's ads for a cabinetmaker and returned to its employ. He was laid off on December 28, recalled to work on January 17, 1991, laid off again on January 22, 1991, recalled on February 21, 1991, and was still employed by Respondent at the time of the hearing herein. He remained in Respondent's employ during 1991 doing carpentry work, such as hanging doors and doing ceilings, work, which he testified, Davidson could not do. In addition, he could work on his own, whereas Davidson always worked with Clarke. Lee was also laid off on December 28, recalled on January 29, 1991 and laid off again on March 16, 1991. He also did carpentry work that Davidson was unable to perform, and was capable of working on his own. Chuel Yedum, previously identified as ''Wu,'' also was a carpenter who was laid off on December 21, recalled on January 17, 1991, and again laid off on March 18, 1991. In addition, Respondent employed Iosif Kornev, a carpenter who quit its employ in 1989; he applied to work for Respondent, again, on November 11, 1991, and was hired at that time. He was chosen because he was a ''very experienced carpenter and supervisor.'' He was the only carpenter or cabinetmaker who was hired in 1991.

Marisabel Rodriguez, the controller and bookkeeper for Respondent, testified about the proposals and bids received by Respondent in 1990 and 1991. She testified that there was very little cabinet work carried over from 1990 to 1991, and what little there was, Clarke did. A large majority of the work that Respondent received in 1991 was mechanical and electrical work.

In order to disprove General Counsel's argument of Union animus, Counsel for Respondent adduced evidence of prior dealings that Respondent had with other unions. Saliba testified that for about the last ten years Respondent has maintained collective-bargaining agreements with the Mason Tenders Union covering its laborers. In addition, when Respondent commenced operations it had collective-bargaining relationships with the United Brotherhood of Carpenters and Joiners and the Operating Engineers, which it no longer has.

Analysis

Evidence was adduced about three separate 8(a)(1) encounters. The first one was the allegation of the August situation on the boat. Davidson testified that Saliba asked he and Clarke if they knew anything about the Union and they said that they didn't. Saliba then said that whoever was in the Union ''would get fucked.'' Clarke testified that Saliba merely asked him if he knew anything about some union guys and he said that he didn't. Saliba testified that he only asked them if they knew who the strangers were that were at the shop recently; he did not refer to them as ''union'' people, and did not learn until ''months later'' that they were from the Union, and he did not say that whoever was in the Union ''would get fucked.'' Neither Davidson nor Saliba was, obviously, a incredible witness, but, at least, one was not telling the truth.[4] I found Saliba's testimony about the ''stranger'' at the shop not credible and do not credit his testimony about this incident. Because I found Cecil Clarke's testimony about this incident the most credible (even though he was brought to the proceedings by Respondent, and was still employed by Respondent, he readily testified to Saliba's question about the union guys) I credit his testimony over that of Davidson and find that Saliba asked Davidson and

[2] As stated above, the unfair labor practice charges in this matter were filed in February and April 1991. There is no record evidence of any prior charges involving this employer.

[3] In testifying about the layoff of his cabinetmakers, Saliba failed to mention Hernandez.

[4] In its brief, counsel for Respondent alleges that the reason Davidson's testimony should not be credited is that although Davidson testified that he told others of this interrogation, nobody was called to corroborate this testimony and ''John Bel was called as a witness by General Counsel and never asked this line of questioning.'' This is not so. On direct examination, Bel was asked whether Davidson had told him of the August incident with Saliba; he said that he had. When Bel was asked what Davidson told him, counsel for Respondent objected on the ground that this was hearsay and I sustained the objection. Counsel for Respondent also objected when Davidson attempted to testify about which fellow employees he spoke to about the incident.

Clarke if they knew anything about some union guys; they answered that they did not.

In *Rossmore House*, 269 NLRB 1196 (1984), the Board decided that in determining whether interrogations violate Section 8(a)(1) of the Act, the test is whether, under all the circumstances, the interrogation reasonably tends to restrain, coerce or interfere with the employees' Section 7 rights. One of the circumstances to consider is whether the employee who was interrogated was an open and active union supporter. Subsequently, in *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985), the Board stated that it disapproved of a per se approach in making these determinations, and will take into account the circumstances surrounding the interrogation and the reality of the workplace. *Bo-Ed, Inc.*, 281 NLRB 226 (1986). All the circumstances of this question on the boat present a difficult, borderline question of legality. The question was asked by Saliba, Respondent's owner, for not valid reason (since I do not credit his testimony about the ''strangers in the shop''). As the petition was filed on July 30, it may be that in one of Saliba's telephone calls on the boat he learned that the petition was received and that prompted the question to Davidson and Clarke. In addition, neither Davidson nor Clarke were open and active union supporters. On the other hand, Saliba did not follow this question with further questions, nor was it accompanied by coercive statements. However, because the questioner, Saliba, was the boss, and Davidson and Clarke both lied to him because they were afraid what would happen if they admitted knowing about the Union, I find that this interrogation violates Section 8(a)(1) of the Act. *Benjamin Coal Co.*, 294 NLRB 572 at 583.

The next allegations involve one-on-one statements allegedly made by Saliba to Davidson on December 11;[5] the first conversation allegedly took place in the shop. The next one, in the car on the way to the Rockaway job. In the earlier situation, after telling Davidson that he would have to lay him off because he had no more cabinet work, Saliba said that his lawyer said that he could begin campaigning and saying whatever he wanted, and that he knew what he told him went back to the Union. Saliba also told him that ''with the Union'' a cabinetmaker can only make cabinets and a carpenter can only do carpentry. Saliba denies this entire alleged conversation, testifying that on that morning he only told Davidson that they would be going to the Rockaway job. As stated above, Davidson v. Saliba is a difficult credibility determination especially without the assistance of a third party's testimony, which is not present in the December 11 allegations. In this instance, I credit Davidson's testimony. This situation occurred nine days prior to the Board election; in this situation, it would not be unusual for an employer to inform an employee that his lawyer told him that he could commence his campaign and, in that regard, to also tell his employee of certain union restrictions that could effect his employment. Considering Davidson's apparent credibility, and with no obvious reasons to discredit him in this situation, I therefore credit his testimony over that of Saliba.

This allegation involves the prediction of the effects of unionization. An employer can, of course, tell his employees that if they vote to bring in a union, they may lose some benefits (usually flexibility and the ability to speak directly to their boss) *during the negotiating process.* As the Supreme Court stated in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 at 618: ''In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control.'' Saliba's statement to Davidson is a classic example of the threats that *Gissel* was meant to prohibit; he first told Davidson that he had to lay him off because there was no more cabinet work in the shop. In telling him of the alleged union restrictions on what work the employees are allowed to perform, he did not say that this could be the result of negotiations with the Union or that the Union would insist on this work restriction and that he might have to agree to such a provision. He made it automatic, when the Union comes in this is what happens. I therefore find that this threat violates Section 8(a)(1) of the Act. *Rexall Corp.*, 265 NLRB 121 (1982). I also find that Saliba's statement to Davidson that he knew that whatever he told him went back to the Union constitutes an impression of surveillance in violation of Section 8(a)(1) of the Act. Although General Counsel, at the hearing, amended the complaint to allege that it occurred in the car on the way to the jobsite, whereas the complaint originally (correctly) alleged that it occurred at the Queens facility, this was fully litigated and Respondent was not prejudiced by this error.

For the same reasons as stated above, I also credit the testimony of Davidson over Saliba regarding the statements made in the car regarding the denial of a wage increase and a bonus. In this context, a statement that ''because of the Union,'' he could not give the employees a wage increase and a bonus clearly violates Section 8(a)(1) of the Act, and I so find.

The final allegation herein is that the layoff of Davidson on December 28 violated Section 8(a)(1) and (3) of the Act. I find that General Counsel has sustained its initial burden under *Wright Line*, 251 NLRB 1083 (1980). Davidson was the Union's observer only 8 days before the layoff, and in 6 years of employment with Respondent he had never previously been laid off. In addition, the statements that Saliba made to Davidson in August and on December 11 clearly establish some union animus on the part of Respondent, even if it has had contracts with other unions and still has a contract with one union. The ultimate issue is therefore whether Respondent has satisfied its burden of establishing that Davidson would have been laid off even absent the Union and his observer status for the Union. I find that Respondent has satisfied its burden herein.

Initially, I discredit Davidson's testimony that he overheard Saliba tell Maurice Clarke that he was getting rid of the union guys little by little. This was denied by Clarke (and Saliba), who I found to be a credible witness. Additionally, I find it highly unlikely that Saliba would say such a thing within the hearing of an employee whom he had just laid off. Saliba impressed me as a savvy employer who would be more careful than that. More importantly, I believed Respondent's economic defense to the layoff. Although I generally credited the testimony of Davidson over Saliba, I did not find Saliba to be a totally incredible witness.

[5] I agree with counsel for Respondent that Saliba's statement that even when the Union was gone he would still be in business does not violate Sec. 8(a)(1) of the Act as a statement of the futility of selecting the Union and therefore recommend that this allegation be dismissed.

I found Rodriguez to be a very credible witness supporting Respondent's defense that there was very little cabinet work to perform in 1991 and, what little there was, was performed by Cecil Clarke. This testimony is further supported by the fact that all of the cabinetmakers and carpenters were laid off beginning in December and most (in addition to Davidson) were still not called back by the time of the hearing. In fact, Cecil Clarke was laid off on two or three occasions in about early 1991. The level of cabinet work at the shop must have been low as Davidson spent his final 3 weeks of employment with Respondent spray painting trucks. Finally, General Counsel alleges that Respondent laid off Davidson because he acted as the Union's observer at the Board-conducted election on December 20. However, the testimony establishes that 9 days prior to the election Saliba told him that he was going to lay him off because of the lack of cabinet work. There is no evidence that Saliba was then aware that Davidson had signed a card for the Union; in fact, in August, both Davidson and Cecil Clarke denied any knowledge of the union campaign. For all these reasons I find that Respondent has sustained its burden, and I recommend that the allegation that the layoff of Davidson violated Section 8(a)(1) and (3) of the Act be dismissed.

CONCLUSIONS OF LAW

1. Respondents Monarch and Hallmark constitute a single-integrated business enterprise and each is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act in the following manner:

(a) Interrogating its employees regarding their knowledge of the Union and the union campaign.

(b) Creating an impression among its employees that their union activities were under surveillance.

(c) Threatening its employees with the loss of benefits, including wage increases and bonuses, if the Union became their collective-bargaining representative.

4. The Respondent did not further violate the Act as also alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and the on entire record, I issue the following recommended

ORDER[6]

The Respondent, Monarch Construction Corp. and Hallmark Interiors, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees regarding their knowledge of the Union and the union campaign.

(b) Creating an impression among its employees that their union activities were under surveillance by Respondent.

(c) Threatening employees with the loss of some benefits, including wage increases and bonuses, if they selected the Union as their collective-bargaining representative.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility or facilities in Queens, New York, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed as to allegations not specifically found herein.

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[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''